

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1612 of 1997

in

SPECIAL CIVIL APPLICATION No 507 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVERNMENT OF INDIA

Versus

MANIBHAI NATHJI PANDYA

Appearance:

MR JD AJMERA for Appellant
DR SONIA HURRA for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 02/04/98

ORAL JUDGEMENT

1. Admitted. Dr. Ms. Sonia Hurra appears and waives

service of notice of admission on behalf of respondent No.1.

2. Heard Mr. Ajmera and Ms. Hurra for the respective parties. The main contention of Mr. Ajmera was that there was lack of proof about imprisonment of respondent No.1-petitioner for six months or more and that the learned Single Judge has not considered the aspect that the question of grant or refusal of pension can only be considered by the Government, as held by the Supreme Court in *Mukund Lal Bhandari v. Union of India*, AIR 1993 SC 2127. However, we may quote the observations made by the Supreme Court in paragraph 4 of the said judgment:-

"4. As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.

As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it is ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should fine out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be

the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Samman Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit."

3. Considering the facts and circumstances, in our opinion, the case of respondent No.1 needs to be reconsidered by the Central Government and, therefore, while setting aside the judgment and order passed by the learned Single Judge in Special Civil Application No.507 of 1995, from which this appeal arises, the following directions are given:-

- (1) Special Civil Application No.507 of 1995 will be treated as an application by the original petitioner for Swatantrata Sainani Samman Pension Scheme.
- (2) Copy of the writ shall be sent to the State Government as well as the Central Government.
- (3) Having considered the fact that respondent No.1 has made several representations to the authorities, the last being on 23rd October, 1992, and keeping in light the other documentary evidence produced in support of his claim, the authorities concerned will decide this application in light of those documents. It would be open for respondent No.1-petitioner to produce other documents within 30 days from today, if at all he proposes to produce any document and the Government will decide the same within three months, thereafter, or, in any case, within four months from the receipt of the writ of this Court.

4. We are sure, the authorities concerned will decide the application keeping in mind the spirit behind floating of such schemes by the Government and the observations made by the Apex Court in the case of Mukund Lal Bhandari (*supra*). Appeal is, accordingly, allowed. No costs.

(C.K. THAKKAR, J.)

(A.L. DAVE, J.)

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